

Number: **201123013**  
Release Date: 6/10/2011  
Index Number: 1362.01-03

Date:  
March 03, 2011

## Law and Analysis

Section 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year (A) at any time during the preceding taxable year, or (B) at any time during the taxable year and on or before the 15<sup>th</sup> day of the third month of the taxable year.

Section 1362(b)(3) provides that if (A) a small business corporation makes an election under § 1362(a) for any taxable year, and (B) the election is made after the 15<sup>th</sup> day of the third month of the taxable year and on or before the 15<sup>th</sup> day of the third month of the following taxable year, then such election shall be treated as made for the following taxable year.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)), after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, the Secretary may treat the election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

### Conclusion

Based solely on the facts submitted and representations made, we conclude that Company has not established reasonable cause for failing to timely make an S corporation election. Thus, we conclude that Company is not eligible for relief under § 1362(b)(5).

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion as to whether Company is otherwise eligible to be an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Mary Beth Carchia  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes